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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANKLIN DURAN,

Defendant and Appellant.

B213736

(Los Angeles County
Super. Ct. No. BA334946)

THE COURT:*

Franklin Duran (appellant) appeals from the denial of his motion to withdraw his guilty plea on January 26, 2009. Appellant pleaded “no contest” to one count of second degree robbery in violation of Penal Code section 211, a felony. A second count and a gang allegation were dismissed. The trial court imposed the bargained-for low term of two years in prison.

We appointed counsel to represent appellant on this appeal. After examination of the record, counsel filed an “Opening Brief” containing an acknowledgment that she had been unable to find any arguable issues. On June 23, 2009, we advised appellant that he

* BOREN, P. J., DOI TODD, J., ASHMANN-GERST, J.

had 30 days within which to personally submit any contentions or issues that he wished us to consider. No response had been received to date.

Because of appellant's plea, we glean the facts from the transcript of his preliminary hearing with codefendant Anselmo Juarez (Juarez). Edward Rivera (Rivera) testified that he went to a baptism and birthday party on January 12, 2008, in the City of Industry. Shortly before midnight, six to eight young Hispanic males entered the parking lot where the party was being held. He identified appellant and Juarez as being among them. The males yelled "18" and "We're 18." Appellant hit Rivera on the head with a chair, and he fell down. Appellant also stole Rivera's gold chain from his neck. Rivera was injured on his nose and above the eye.

The family members at the party all got up, and the men who had barged in ran away. Some men from the party pursued them. Appellant tried to jump a wall and fell, and he was caught and held by the people from the party.

The DJ at the party, Sigfredo Hernandez (Hernandez) identified appellant and Juarez as two of the men who invaded the party. He did not see Rivera being hit and did not remember telling an officer he saw appellant rip a necklace from Rivera. He heard the men say they were "cholos," not gang members. Hernandez received a call from someone who said he was from Honduras and was the brother of the person in jail who was beaten up. The caller asked Hernandez to talk to Rivera and ask him not to press charges. Hernandez received about 10 calls from this person.

Officer Frank Garcia of the Los Angeles Police Department interviewed Hernandez. At that time Hernandez said he saw appellant throw a chair at Rivera and grab his necklace. To Officer Garcia's knowledge, nothing was found on appellant when he was arrested or at the jail. Officer Karla Godoy testified that the party invasion and the robbery and assault were committed in furtherance of the 18th Street gang. Appellant had previously admitted his 18th Street membership to her. He is a member of the Shadow Park clique and was served with a gang injunction.

On April 23, 2008, appellant filed a motion to withdraw his plea of no contest. The public defender and alternate public defender declared a conflict, and appellant was

appointed a bar panel attorney who filed a motion for recall and reconsideration of sentence, claiming that new and different facts had arisen. Counsel also filed another motion to withdraw the plea on September 12, 2008, arguing that appellant took the plea bargain under duress. On September 24, 2008, appellant filed a supplemental motion to withdraw his plea, arguing that his public defender at the taking of the plea was ineffective.

At the hearing on the motion, appellant testified that he was innocent, the public defender intimidated him, and the public defender lied about investigating appellant's witnesses and evidence. Appellant was invited to go to the party by a man from work, and when he was leaving, 12 to 15 people beat him up. Appellant did not rob or hit anyone. He had been a gang member in his home country, but he no longer was. Appellant never thought he had accepted a deal in which he pleaded guilty in exchange for two years in prison. He had agreed to go to trial.

On cross-examination, appellant showed the court that he had a "1" and an "8" tattooed on his arms. He also had tattoos of an "S" and a "P." Appellant said the "S" and the "P" stood for San Pedro Sula in his country and not Shadow Park. Appellant denied being served with a gang injunction and said he was just told he could not hang out with cholos, but he did not do so anyway. Appellant said the interpreter at the taking of the plea spoke too fast and he did not understand.

The trial court questioned appellant extensively about the taking of the plea. Appellant said he never pleaded guilty or anything like guilty. His attorney told him to "just say yes." Appellant did not understand that he was sentenced to prison. The interpreter spoke too fast when she interpreted the district attorney's questions. Appellant's attorney would just say "yes" to all appellant's questions. The first time appellant discovered he had been sentenced to prison was when he was returned to jail. He did not plead guilty or no contest.

Maria Ramirez (Ramirez) testified that she was invited to a party on January 12, 2008, and her invitation was shown to the court. She went with her husband, who worked with appellant, and her children. Appellant arrived at approximately 7:00 p.m.

She left the party with appellant and her children at approximately 11:00 p.m. As they left, a lot of men who had been at another party downstairs came towards them and began to throw chairs. Ramirez was struck. When appellant asked the men what was wrong, they started to hit him. Ramirez stated that appellant was not an 18th Street gangster. She did not see appellant hit anyone with a chair, take anyone's necklace, or say a gang name. Appellant's previous attorney never talked to her, although she tried to show him the invitation.

Defense counsel argued that appellant was misled or pressured into pleading. The trial court pointed out that appellant's declaration claimed his attorney pressured him to plead, but his testimony was that he did not remember pleading and getting sent to prison. The court was concerned with this inconsistency. The record clearly showed that appellant was told by his attorney that if he wanted "the two" he should plead no contest, and then appellant said, "no contest." All of appellant's answers were appropriately responsive to the questions that were asked at the taking of the plea. The trial court stated finally that he did not believe appellant. There was nothing that allowed the court to conclude appellant's plea was not knowing, voluntary, and intelligent. The court believed appellant merely changed his mind, and it denied the motion.

We have examined the entire record and are satisfied that appellant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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